

October 10, 2017

The Editor
New Yorker Magazine
1 World Trade Center
New York, NY 10007

Re: How the Elderly Lose Their Rights/October 9, 2017 Issue

Dear Editor,

Thank you for publishing Rachel Aviv's article in the New Yorker on October 9, 2017, "How the Elderly Lose Their Rights." It is a chilling look at systemic financial exploitation of elders in Clark County, Nevada, which was perpetuated through a guardianship system that was, at best, very poorly managed.

My organization, the Massachusetts Guardianship Policy Institute (www.guardianship.institute), supports legislation in Massachusetts to create an Office of Adult Guardianship and Decisional Support Services. This agency would take a major first step toward ensuring that what happened in Clark County does not happen in our state. There is no evidence of systemic failures in Massachusetts of the kind that occurred in Nevada. But there is plenty of evidence of unmet guardianship needs and overstretched resources overseeing the guardianship system.

The exploitation of seniors needs to be stopped before it happens. Many kinds of resources are needed. As the Aviv article makes clear, however, states often do not have access to even the most basic tools, such as accurate data about the number, status or outcomes of their own guardianship cases. Nor do they have reliable information about unmet guardianship needs, which is an equally-severe problem at the other end of the financial spectrum: people with no resources, who face evictions, scams, delays of medical treatment and other hardships because there is no public or private guardian available to defend or act for them.

Abuse, whether caused by a lack of suitable guardians or by guardians themselves, can be prevented. But prevention is difficult to achieve without a coordinated state policy to guide the system. The elements of effective oversight include —

- (1) Effective tracking of how many guardianships there are, and how many such appointments any one individual receives;
- (2) Meaningful performance standards and periodic reviews of every guardianship, including whether the need still exists, or has changed in scope;
- (3) Robust development and use of alternatives to guardianship, such as the new concept of supported decision-making, as well as durable powers of attorney, health care proxies and other traditional forms of voluntary support;
- (4) Outreach, training and support for family members and friends to serve as guardians, in order to reduce the number of times that strangers must be appointed to the role;

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- (5) Close communication with community resources who work with seniors and their families, such as elder services agencies, local AARP chapters, patient associations (e.g., the Alzheimer's Association), disabilities groups, and other advocacy organizations, to provide continuous feedback about circumstances that may suggest abuse.

In Massachusetts and many other states, there is not a central public office to coordinate all of these essential functions of a healthy protective environment for seniors. Massachusetts, for example, has three different state agencies with varying guardianship responsibilities for different parts of the population who may need decisional help, and no agency with general oversight of whether, or how well, all of the needs are being met. Overburdened courts rely on *pro bono* legal services to keep up with more than 15,000 annual Guardianship Reports. The Reports themselves are entirely self-generated, and unlikely to reveal an intentional case of exploitation.

In addition to uneven standards and procedures, an estimated 2,800-3,800 individuals who need a guardian wait weeks, months or sometimes forever in Massachusetts for a willing and able fiduciary. These are individuals who lack family or friends to step in, and have no money to pay a professional guardian. There is no follow-up specific to this population of the quality of services that they end up with.

With demographics now showing an unprecedented number of seniors and their life savings potentially vulnerable to predation or neglect, the risks of abuse *through* guardianship, as well as *without* guardianship, are too great to leave the task to a patchwork system.

A bill is now before the Massachusetts Legislature, sponsored by Rep. Paul Brodeur in the House and Sen. Cynthia Creem in the Senate, that will establish the Office of Adult Guardianship and Decisional Support Services for the Commonwealth. The Office will be tasked with providing coordinated oversight of guardianship for individuals who fall between cracks in our current patchwork system. It is proposed as a pilot program, but it holds the promise of exactly the kind of robust nexus of data management, technical expertise, standard-setting, clinical oversight and community involvement that Massachusetts urgently needs for its most vulnerable seniors.

It is time for reforms in Massachusetts, and in many other states, to bring decisional support policy into the 21st Century. The example of Clark County, and any other jurisdictions where abuses have been discovered, are reasons to commit more energy and resources to this task than we have done up to now. Courts are eager for more public attention to these issues, and the time is short.

The Massachusetts Guardianship Policy Institute welcomes contact from others who support reform and alternatives to guardianship. Thank you for this opportunity to respond to Ms. Aviv's well-written article.

Very truly yours,

Massachusetts Guardianship Policy Institute,

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